



DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS-R7-SM-2021-0039; FXFR13350700640–223–FF07J00000]

RIN 1018–BF19

Subsistence Management Regulations for Public Lands in Alaska—2023–24 and 2024–25

Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for fish and shellfish seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2023–2024 and 2024–2025 regulatory years. The Federal Subsistence Board (Board) is on a schedule of completing the process of revising subsistence taking of fish and shellfish regulations in odd-numbered years and subsistence taking of wildlife regulations in even-

numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle; in addition, during the rulemaking cycle for the fish and shellfish regulations, the Board will accept proposals for nonrural determinations. When final, the resulting rulemaking will replace the existing subsistence fish and shellfish taking regulations. This proposed rule could also amend the general regulations on subsistence taking of fish and wildlife.

DATES: *Public meetings:* The Federal Subsistence Regional Advisory Councils will hold public meetings to receive comments and make proposals to change this proposed rule February 8 through March 24, 2022, and will hold another round of public meetings to discuss and receive comments on the proposals, and make recommendations on the proposals to the Federal Subsistence Board, on several dates between September 20 and November 2, 2022. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, in January 2023. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: Comments and proposals to change this proposed rule must be received or postmarked by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Public meetings:* The Federal Subsistence Board and the Federal Subsistence Regional Advisory Councils' public meetings are held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter Docket number FWS-R7-SM-2021-0039. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”
- *By hard copy:* Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS-R7-SM-2021-0039; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church VA 22041–3803. If in-person meetings are held, you may also deliver a hard copy to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See

SUPPLEMENTARY INFORMATION for additional information on locations of the public meetings.

We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Review Process** section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Sue Detwiler, Office of Subsistence Management; (907) 786–3888 or subsistence@fws.gov. For questions specific to National Forest System lands, contact Gregory Risdahl, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 302–7354 or gregory.risdahl@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (hereafter

referred to as “the Secretaries”) jointly implement the Federal Subsistence Management Program (hereafter referred to as “the Program”). The Program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. Only Alaska residents of areas identified as rural are eligible to participate in the Program. The Secretaries published temporary regulations to carry out the Program in the *Federal Register* on June 29, 1990 (55 FR 27114), and final regulations on May 29, 1992 (57 FR 22940). Program officials have subsequently amended these regulations a number of times.

Because the Program is a joint effort between the Departments of the Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): The Agriculture regulations are at title 36, “Parks, Forests, and Public Property,” and the Interior regulations are at title 50, “Wildlife and Fisheries,” at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. Consequently, to indicate that identical changes are proposed for regulations in both titles 36 and 50, in this document we will present references to specific sections of the CFR as shown in the following example: § __.24.

The Program regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife. Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, National Park Service;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and

- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D. Subpart C sets forth important Board determinations regarding program eligibility, i.e., which areas of Alaska are considered rural and which species are harvested in those areas as part of a “customary and traditional use” for subsistence purposes. Subpart D sets forth specific harvest seasons and limits.

In administering the Program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council. The Regional Advisory Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Regional Advisory Council members represent varied geographical, cultural, and user interests within each region.

Public Review Process—Comments, Proposals, and Public Meetings

The Federal Subsistence Regional Advisory Councils will have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board, through the Federal Subsistence Regional Advisory Councils, will hold public meetings via teleconference on this proposed rule on the following dates:

| | |
|---|-------------------|
| Region 1—Southeast Regional Council | March 22, 2022 |
| Region 2—Southcentral Regional Council | February 10, 2022 |
| Region 3—Kodiak/Aleutians Regional Council | February 22, 2022 |
| Region 4—Bristol Bay Regional Council | February 8, 2022 |
| Region 5—Yukon-Kuskokwim Delta Regional Council | March 1, 2022 |
| Region 6—Western Interior Regional Council | February 16, 2022 |
| Region 7—Seward Peninsula Regional Council | March 3, 2022 |

| | |
|--|-------------------|
| Region 8—Northwest Arctic Regional Council | February 14, 2022 |
| Region 9—Eastern Interior Regional Council | March 8, 2022 |
| Region 10—North Slope Regional Council | March 8, 2022 |

Teleconferences are being held in lieu of in-person meetings due to public health and safety restrictions that are in effect. A public notice of specific dates, times, call-in number(s), and how to participate and provide public testimony will be published in local and statewide newspapers prior to each meeting.

During April 2022, the written proposals to change the regulations at subpart D, take of fish and shellfish, and subpart C, customary and traditional use and nonrural determinations, will be compiled and distributed for public review. Written public comments will be accepted on the distributed proposals during a second 30-day public comment period, which will be announced in statewide newspaper and radio ads and posted to the program webpage and social media. The Board, through the Regional Advisory Councils, will hold a second series of public meetings in September through November 2022, to receive comments on specific proposals and to develop recommendations to the Board on the following dates:

| | |
|---|--------------------|
| Region 1—Southeast Regional Council | October 25, 2022 |
| Region 2—Southcentral Regional Council | October 13, 2022 |
| Region 3—Kodiak/Aleutians Regional Council | September 20, 2022 |
| Region 4—Bristol Bay Regional Council | November 1, 2022 |
| Region 5—Yukon-Kuskokwim Delta Regional Council | October 27, 2022 |
| Region 6—Western Interior Regional Council | October 19, 2022 |
| Region 7—Seward Peninsula Regional Council | October 4, 2022 |
| Region 8—Northwest Arctic Regional Council | October 31, 2022 |
| Region 9—Eastern Interior Regional Council | October 5, 2022 |
| Region 10—North Slope Regional Council | October 13, 2022 |

Teleconferences will substitute for in-person meetings based on current public health and safety restrictions in effect. A public notice of specific dates, times, call-in number(s), and how to participate and provide public testimony will be published in local and statewide newspapers prior to each meeting. The amount of work on each Regional Advisory Council's agenda determines the length of each Regional Advisory Council meeting, but typically the meetings are scheduled to last 2 days. Occasionally a Council will lack information necessary during a scheduled meeting to make a recommendation to the Board or to provide comments on other matters affecting subsistence in the region. If this situation occurs, the Council may announce on the record a later teleconference to address the specific issue when the requested information or data is available; it is noted that any follow up teleconference would be an exception and must be approved, in advance, by the Assistant Regional Director for the Office of Subsistence Management. These teleconferences are open to the public, along with opportunities for public comment; the date and time will be announced during the scheduled meeting and that same information will be announced through news releases and local radio, television, and social media ads.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, Alaska, in January 2023. The Federal Subsistence Regional Advisory Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional oral testimony may be provided on specific proposals before the Board at that time. At that public meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify the general fish and wildlife regulations, fish and shellfish harvest regulations, and customary and traditional use determinations must include the following information:

- a. Name, address, and telephone number of the requestor;

- b. Each section and/or paragraph designation in this proposed rule for which changes are suggested, if applicable;
- c. A description of the regulatory change(s) desired;
- d. A statement explaining why each change is necessary;
- e. Proposed wording changes; and
- f. Any additional information that you believe will help the Board in evaluating the proposed change.

Proposals to the Board to modify the nonrural determinations must include the following information:

- a. Full name and mailing address of the proponent;
- b. A statement describing the proposed nonrural determination action requested;
- c. A detailed description of the community or area under consideration, including any current boundaries, borders, or distinguishing landmarks, so as to identify which Alaska residents would be affected by the change in nonrural status;
- d. Rationale and supporting evidence (law, policy, factors, or guidance) for the Board to consider in determining the nonrural status of a community or area;
- e. A detailed statement of the facts that illustrate that the community or area is nonrural or rural using the rationale and supporting evidence stated above; and
- f. Any additional information supporting the proposed change.

The Board immediately rejects proposals that fail to include the above information, or proposals that are beyond the scope of authorities in §§ __. 23 and __.24, subpart C (the regulations governing nonrural determinations and customary and traditional use), and §§ __.25, __.27, and __.28 of subpart D (the general and specific regulations governing the subsistence take of fish and shellfish). If a proposal needs clarification, prior to being distributed for public review, the proponent may be contacted, and the proposal could be revised based on their input. Once a proposal is distributed for public review, no additional changes may be made

as part of the original submission. During the January 2023 meeting, the Board may defer review and action on some proposals to allow time for cooperative planning efforts, or to acquire additional needed information. The Board may elect to defer taking action on any given proposal if the workload of staff, Regional Advisory Councils, or the Board becomes excessive. These deferrals may be based on recommendations by the affected Regional Advisory Council(s) or staff members, or on the basis of the Board's intention to do least harm to the subsistence user and the resource involved. A proponent of a proposal may withdraw the proposal provided it has not been considered, and a recommendation has not been made, by a Regional Advisory Council. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

You may submit written comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit a comment via <https://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov> at Docket No. FWS-R7-SM-2021-0039, or by appointment, provided no public health or safety restrictions are in effect, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays, at: USFWS, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503.

Reasonable Accommodations

The Federal Subsistence Board is committed to providing access to these meetings for all participants. Please direct all requests for sign language interpreting services, closed captioning,

or other accommodation needs to Robbin La Vine, 907-786-3888, subsistence@fws.gov, or 800-877-8339 (TTY), 7 business days prior to the meeting you would like to attend.

Tribal Consultation and Comment

As expressed in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 82 FR 4915 (January 17, 2017). Consultation with Alaska Native corporations is based on Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: “The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.”

The Alaska National Interest Lands Conservation Act does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because Tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule.

The Board will engage in outreach efforts for this proposed rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board’s meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an

opportunity to Tribes and Alaska Native corporations for consultation in regard to subsistence rulemaking.

The Board will consider Tribes’ and Alaska Native corporations’ information, input, and recommendations, and address their concerns as much as practicable.

Developing the 2023–24 and 2024–25 Fish and Shellfish Seasons and Harvest Limit

Proposed Regulations

In titles 36 and 50 of the CFR, the subparts C and D regulations are subject to periodic review and revision. The Board currently completes the process of revising subsistence take of fish and shellfish regulations in odd-numbered years and wildlife regulations in even-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle.

Nonrural determinations are taken up during fish and shellfish cycles.

Based on a revised Board policy, the Board will start reviewing closures to the take of fish/shellfish and wildlife during each applicable cycle. The following table lists the current closures being reviewed for this cycle. In reviewing a closure, the Board may maintain, modify, or rescind the closure. If a closure is rescinded, the regulations will revert to the existing regulations in place prior to the closure, or if no regulations were in place, any changes or the establishment of seasons, methods and means, and harvest limits must go through the full public review process. The public is encouraged to comment on these closures, and anyone recommending that a closure be rescinded should submit a proposal to establish regulations for the area that was closed.

TABLE 1—FISH AND SHELLFISH CLOSURES TO BE REVIEWED BY THE FEDERAL SUBSISTENCE BOARD FOR THE 2023–2024 AND 2024–2025 REGULATORY YEARS

| Fishery Management Area | Closure Area |
|--------------------------------|--|
| Yukon/ Northern Area | Kanuti River (all fish). |
| Yukon/ Northern Area | Bonanza Creek (all fish). |
| Yukon/ Northern Area | Jim River, including Prospect and Douglas Creeks (all fish). |
| Yukon/ Northern Area | Delta River (all fish). |

| | |
|--------------------------|--|
| Yukon/ Northern Area | Nome Creek in Beaver Creek Drainage (Grayling). |
| Aleutians Area | Unalaska Lake (Salmon)—The waters of Unalaska Lake, its tributaries and outlet streams. |
| Aleutians Area | Summers and Morris Lakes (Salmon)—The waters of Summers and Morris Lakes and their tributaries and outlet streams. |
| Aleutian Area | Unalaska Bay Freshwater Streams (Salmon/Anadromous Fish)—All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point. |
| Aleutians Area | McLees Lake (Salmon)—Waters of McLees Lake and its tributaries and outlet streams. |
| Aleutian Area | Adak and Kagalaska Freshwaters (Salmon)—All freshwater on Adak and Kagalaska Islands in the Adak District. |
| Alaska Peninsula Area | Russel Creek and Nurse Lagoon (Salmon)—Waters of Russel Creek and Nurse Lagoon and within 500 yards outside of the mouth of Nurse Lagoon. |
| Kodiak Area | Womens Bay (Salmon)—All waters inside a line from the tip of the Nyman Peninsula (57°43.23' N. lat. 152°31.51' W. long.), to the northeastern tip of Mary's Island (57°42.40' N. lat., 152°32.00' W. long.), to the southeastern shore of Womens Bay at 57°41.95' N. lat., 152°31.50' W. long. |
| Kodiak Area | Russel Creek and Nurse Lagoon (Salmon)—Waters of Russel Creek and Nurse Lagoon and within 500 yards outside of the mouth of Nurse Lagoon. |
| Kodiak Area | Buskin River Marine Waters (Salmon)—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude. |
| Kodiak Area | Selief Bay Creek—All waters (Salmon): Fishing within 100 yards of the terminus of Selief Bay Creek. |
| Kodiak Area | Afognak Bay (Salmon)—All waters north and west of a line from the tip of Last Point to the tip of River Mouth Point. |
| Kodiak Area | Afognak Island Freshwaters (Salmon)—All freshwater systems of Afognak Island. |
| Kodiak Area | Little Kitoi Creek (Salmon)—All waters 500 yards seaward of the mouth. |
| Kodiak Area | The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove (King Crab), and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island. |
| Southeastern Alaska Area | Taku River (Salmon). |
| Southeastern Alaska Area | Neva Lake, Neva Creek, and South Creek (Sockeye Salmon). |

The current subsistence program regulations form the starting point for consideration during each new rulemaking cycle. Consequently, in this rulemaking action pertaining to fish

and shellfish, the Board will consider proposals to revise the regulations in any of the following sections of titles 36 and 50 of the CFR:

- § __.23: rural determinations;
- § __.24: customary and traditional use determinations;
- § __.25: general provisions governing the subsistence take of wildlife, fish, and shellfish;
- § __.27: specific provisions governing the subsistence take of fish; and
- § __.28: specific provisions governing the subsistence take of shellfish.

As such, the text of the proposed 2023–25 subparts C and D subsistence regulations in titles 36 and 50 is the combined text of previously issued rules that revised these sections of the regulations. The following *Federal Register* citations show when these CFR sections were last revised. Therefore, the regulations established by these three final rules constitute the text of this proposed rule:

The text of the proposed amendments to 36 CFR 242.23 and 242.27 and 50 CFR 100.23 and 100.27 is the final rule for the 2021–2023 regulatory period for fish (86 FR 17713; April 6, 2021).

The text of the proposed amendments to 36 CFR 242.24 and 50 CFR 100.24 is the final rule for the 2019–2021 regulatory period for fish (85 FR 74796; November 23, 2020).

The text of the proposed amendments to 36 CFR 242.25 and 50 CFR 100.25 is the final rule for the 2018–20 regulatory period for wildlife (83 FR 50758; October 9, 2018).

The text of the proposed amendments to 36 CFR 242.28 and 50 CFR 100.28 is the final rule for the 2011–13 regulatory period for fish and shellfish (76 FR 12564; March 8, 2011).

These regulations will remain in effect until subsequent Board action changes elements as a result of the public review process outlined above in this document and a final rule is published.

Compliance with Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the subsistence program regulations was conducted in accordance with section 810. This evaluation also supported the Secretaries' determination that the regulations will not reach the "may significantly restrict" threshold that would require notice

and hearings under ANILCA section 810(a).

Paperwork Reduction Act of 1995 (PRA)

This proposed rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 et seq.). OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018–0075, with an expiration date of January 31, 2024. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In

general, the resources to be harvested under this proposed rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.), this proposed rule is not a major rule. It will not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on Federal public lands and waters. The scope of this program is limited by definition to certain public lands. Likewise, these proposed regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this proposed rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or Tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards

provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

Title VIII of ANILCA does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, as described above under *Tribal Consultation and Comment*, the Secretaries, through the Board, will provide federally recognized Tribes and Alaska Native corporations a variety of opportunities for consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare statements of energy effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no statement of energy effects is required.

Drafting Information

- Theo Matuskowitz drafted this proposed rule under the guidance of Sue Detwiler of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:
- Chris McKee, Alaska State Office, Bureau of Land Management;
- Dr. Kim Jochum, Alaska Regional Office, National Park Service;

- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jill Klein, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Gregory Risdahl, Alaska Regional Office, USDA–Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part 242 and 50 CFR part 100 for the 2023–24 and 2024–25 regulatory years.

The text of the proposed amendments to 36 CFR 242.23 and 242.27 and 50 CFR 100.23 and 100.27 matches the amendatory instructions in 86 FR 17713; April 6, 2021 (which is the final rule for the 2021–2023 regulatory period for fish).

The text of the proposed amendments to 36 CFR 242.24 and 50 CFR 100.24 matches the amendatory instructions in 85 FR 74796; November 23, 2020 (which is the final rule for the 2019–2021 regulatory period for fish).

The text of the proposed amendments to 36 CFR 242.25 and 50 CFR 100.25 matches the amendatory instructions in 83 FR 50758; October 9, 2018 (which is the final rule for the 2018–20 regulatory period for wildlife).

The text of the proposed amendments to 36 CFR 242.28 and 50 CFR 100.28 matches the amendatory instructions in 76 FR 12564; March 8, 2011 (which is the final rule for the 2011–13 regulatory period for fish and shellfish).

Sue Detwiler,

Assistant Regional Director,

U.S. Fish and Wildlife Service.

Gregory Risdahl,

Subsistence Program Leader,

USDA–Forest Service.

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